Supreme Court, U.S.
FILED
NOV 27 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1944

In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

ALVIN HEMME, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOINT APPENDIX

DONALD C. RIKLI, ESQUIRE
914 Broadway
Highland, Illinois 62249
(618) 654-2364
Counsel for Appellees

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Appellants

JURISDICTIONAL STATEMENT FILED
JUNE 21, 1985
PROBABLE JURISDICTION NOTED OCTOBER 7, 1985

BEST AVAILABLE COPY

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* The order and judgment of the district court, together with the notice of appeal, are printed in the appendix to the jurisdictional statement and have not been reproduced here.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 83-5069

ALVIN HEMME, DENNIS HEMME AND RON HEMME, AND FARMERS AND MERCHANTS BANK OF HIGHLAND, A CORPORATION, AS TRUSTEE OF THE REVOCABLE LIVING TRUST OF CHARLES W. HIRSCHI, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND COMMISSIONER OF INTERNAL REVENUE, DEFENDANTS

RELEVANT DOCKET ENTRIES

March 9, 1983—1—COMPLAINT submitted
SUMMONS issued and returned to attorney for plaintiff (6)
CONSENT to trial by Magistrate forms mailed x820—EOD, 3/9 pf

March 14, 1983—TPS mailed to attorneys of record, JURY, JANUARY, 1984 book & mmn x820 pf

May 6, 1983—2—RETURN of service, served William F. Smith by certified mail #P266 104 085 signed 3-14-83

May 6, 1983—Proof of service (pltfs)—called atty for proper acknowledgments, not ret. rec.

May 10, 1983—3—ANSWER and defenses (defts) X820
TPS and Mag forms mailed to trial atty, Heald

October 3, 1983—4—MOTION for leave to add party pltf and to file first amended complt Proposed first amended complaint & proposed order

October 6, 1983—5—ORDER (WLB) granting leave to add party pltf and file first amended complaint cc

October 6, 1983 – FIRST AMENDED COMPLAINT adding Farmers and Merchants Bank of Highland

December 8, 1983 – Notices mailed for nonjury trial set for the month of January.

January 27, 1984 – NOTICES mailed for non-jury trial set for the month of March.

February 24, 1984 – 7 – STIPULATION OF FACTS

February 24, 1984 – 8 – ORDER (WLB) Stipulation of Facts filed. Pltf. to file brief in 2 weeks, Deft. to file answer brief within 2 weeks thereafter. Pltf. to file reply brief within 2 weeks thereafter. The Court to rule on stipulation of facts and parties' briefs. Copies.

March 9, 1984 – 9 – BRIEF of Pltfs.

March 23, 1984 – 10 – Trial Brief of Defts.

March 23, 1984 – 11 – Defts' ANSWER to Pltfs' First Amended Complaint

April 6, 1984 – 12 – REPLY Brief of Pltfs.
file and briefs to Judge

July 18, 1984 – NOTICES mailed for a hearing on oral arguments on briefs set for July 27th at 11

July 27, 1984 – HEARING (WLB) Case called for oral arguments on the briefs. Arguments heard and taken under advisement.

August 29, 1984 – 13 – REPLY to pltfs' supplemental brief (USA)

January 23, 1985 – 14 – ORDER (WLB) that the tax under Section 2010(c) as applied to this transaction is so arbitrary and capricious as to tender it unconstitutional.

January 23, 1985 – 15 – JUDGMENT entered in favor of plaintiff and against defendants

January 23, 1985 – CLOSED JS-6 SI-1 X820

February 21, 1985 – 16 – NOTICE OF APPEAL filed in ESL, recd and EOD in Alton 2-25-85

February 21, 1985—17—DEFTS' Designation of Record on Appeal

February 27, 1985—****—INCORRECT entries, Notice of Appeal was to Supreme Court under 28 USC 1252 Short Record being returned from CCA. Clerk, Supreme Court advised do not send any record until they request. Corrected x820 Telephone #, Supreme Court—202 479 3000

April 18, 1985—*EXTENSION of time granted to USA to docket appeal to and including 6-21-85*

July 5, 1985—18—NOTICE of filing an appeal from Supreme Court, #84-1944, October Term, 1984 x820 (USA, et al. vs. Alvin Hemme, et al.)

August 2, 1985—19—NOTICE of filing an appeal, 85-132, October Term, 1985, (A. Hemme, et al. vs. USA, et al.)

October 11, 1985—20—ORDER (SUPREME COURT) . . . the statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. DATED 10-7-85. EOD. 10-11-85

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

Civil No. 83-5069

ALVIN HEMME, DENNIS HEMME AND RON HEMME, AND FARMERS AND MERCHANTS BANK OF HIGHLAND, A CORPORATION, AS TRUSTEE OF THE REVOCABLE LIVING TRUST OF CHARLES W. HIRSCHI,
PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA AND COMMISSIONER OF INTERNAL REVENUE,
DEFENDANTS

STIPULATION OF FACTS

It is hereby stipulated that for purposes of this case the following statements may be accepted as facts, subject to the right of either party to object to the admission of such facts and exhibits in evidence on the grounds of materiality and relevancy, provided however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. The plaintiffs, Alvin Hemme, Dennis Hemme and Ronald Hemme are residents of LeMasa, California, and are all citizens of the United States, and all are transferees of Charles W. Hirschi, Deceased.

2. The plaintiff, the Farmers and Merchants Bank of Highland, at all times mentioned in the First Amended Complaint was and now is a corporation organized and existing under the laws of the State of Illinois, engaged in the business of handling trust accounts, and having its principal office and place of business at 1223 Broadway, Highland, Madison County, Illinois, in the Southern District of Illinois.

3. The plaintiff, the Farmers and Merchants Bank of Highland, at all times mentioned in The First Amended Complaint was and now is the trustee of the Revocable Living Trust of Charles W. Hirschi, dated the 9th day of October, 1974, a true copy of which Revocable Living Trust of Charles W. Hirschi is attached hereto as "Exhibit A."

4. The defendants are the United States of America, Department of the Treasury of the United States of America and the Commissioner of Internal Revenue.

5. This action arises under the provisions of the Internal Revenue Code, (26 U.S.C.), and is a suit for the refund of internal revenue taxes brought pursuant to 28 U.S.C., Section 1346(a)(1).

6. On September 28, 1976, Charles W. Hirschi made gifts to five individuals and, thereafter, duly and timely filed a federal gift tax return thereon on September 30, 1976, at the Internal Revenue Office in Kansas City, Missouri. A true copy of said return is attached hereto as "Exhibit B." The decedent elected to apply the specific exemption in the sum of $30,000.00 against the taxable gifts, pursuant to then-existing Internal Revenue Code Section 2521 (26 U.S.C.).

7. Charles W. Hirschi died on November 9, 1978.

8. The plaintiff, the Farmers and Merchants Bank of Highland, as Trustee of the Revocable Living Trust of Charles W. Hirschi, duly and timely filed a federal estate tax return at the Internal Revenue Office in Kansas City, Missouri. A true copy of said return is attached hereto as "Exhibit C."

9. Since the September 28, 1976 gifts were made within three years of the decedent's date of death, which occurred on November 9, 1978, said gifts were included pursuant to Internal Revenue Code Section 2035 in the gross estate of the decedent on the said federal estate tax return as gifts made in contemplation of death.

10. Since said gifts were made during the period from September 8, 1978, to December 31, 1976 (the transitional period), the Internal Revenue Estate Tax Examiner advised per letter dated April 11, 1980 and examination report dated November 19, 1980 that the amount of the unified credit allowable on the decedent's estate tax return would be reduced by $6,000 from $34,000 to $28,000 (20 percent of the pre-1977 specific exemption, i.e., .20 × $30,000 = $6,000), pursuant to Internal Revenue Code Section 2010(c). The Internal Revenue Estate Tax Examiner therefore concluded that there was a deficiency in the estate tax paid in the amount of $6,000.00. True copies of said letter dated April 11, 1980 and Examination Report dated November 9, 1978 are attached hereto as "Exhibit D."

11. On or about September 22, 1980, the plaintiffs duly filed with the defendant a Protest to Conclusions Resulting From Federal Estate Tax Return Examination which said protest contained such information as defendant required, including a summary statement of the grounds upon which the plaintiffs relied and said protest is now on file with the Internal Revenue Service. A true copy of said protest is attached hereto as "Exhibit E."

12. On or about December 15, 1980 the plaintiffs duly filed with defendant a Protest to 30-day Letter, which protest contained such information as defendant required, including a summary statement of the grounds upon which the plaintiffs relied, and said protest is now on file with the Internal Revenue Service. A true copy of said Protest is attached hereto as "Exhibit F."

13. On or about July 27, 1982, the plaintiffs mailed to the Department of Treasury of the United States of America, Internal Revenue Service, Form 4089, Notice of Deficiency Waiver and enclosed a check for $6,000.00 in payment of the deficiency. A true copy of this I.R.S. Form 4089 Notice of Deficiency-Waiver is attached hereto as "Exhibit G."

14. On August 20, 1982 the plaintiffs filed an IRS Form 843, Claim for Refund of Federal Estate Taxes, with the Department of the Treasury of the United States of America, Internal Revenue Service, a copy of which Claim for Refund of Federal Estate Taxes is attached hereto as "Exhibit H."

15. The sole issue to be decided herein is whether the decedent's election to apply the $30,000 specific exemption against the taxable gifts made on September 28, 1976 results in a $6,000 reduction of the unified credit pursuant to Internal Revenue Code Section 2010 (c), where the gifts were included in the decedent's gross estate, for estate tax purposes, pursuant to Internal Revenue Code, Section 2035.

SETH G. HEALD
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6512
Attorney for the defendants

ALVIN HEMME, DENNIS HEMME AND RON HEMME AND FARMERS AND MERCHANTS BANK OF HIGHLAND, AS TRUSTEE OF THE REVOCABLE LIVING TRUST OF CHARLES W. HIRSCHI
Plaintiffs

By

DONALD C. RIKLI
Attorney for Plaintiffs
914 Broadway
Highland, Illinois 62249
Telephone: (618) 654-2364

8

Form 709 (Rev. Sept. 1975)
Department of the Treasury
Internal Revenue Service

United States Quarterly Gift Tax Return

(Section 6019 of the Internal Revenue Code)

Calendar quarter ending (month and year) ► September, 1976

Donor's first name and middle initial	Donor's last name	Social security number
Charles W.	Hirschi	340-20-9749

Address (number and street)	Residence (domicile)
c/o 914 Broadway	Illinois, U.S.A.

City, State, and ZIP code	Citizenship	Yes	No
Highland, Illinois 62249	U.S.A.		

If you (the donor) filed a previous Form 709, has your address changed since the last Form 709 was filed? . . . . . — X

A Did you (the donor), during the calendar quarter written above (see instruction 1 for treatment of gifts in more than one quarter which aggregate more than $3,000), without adequate and full consideration in money or money's worth, give to any one donee more than $3,000 in value for the calendar year (or regardless of value if a future interest) as follows in items 1 through 8 below: — — X

1(a) by creating a trust for the benefit of a person or persons other than yourself in which you kept no power to revest the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits? (If "Yes," attach a copy of the trust instrument.) . . . . . — X

(b) by adding to such type trust previously created? . . . . . — X

(c) by relinquishing every such power that was retained in a previously created trust? . . . . . — X

2 by permitting a beneficiary, other than yourself, to receive the income from a trust you created in which you kept the power to revest the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits? . . . . . — X

3(a) by purchasing a life insurance policy with proceeds payable to a beneficiary other than your estate in which you kept no power to revest the economic benefits in yourself or your estate or to change the beneficiaries or their proportionate benefits? . . . . . — X

(b) by paying a premium on such type policy previously issued? . . . . . — X

(c) by relinquishing every such power that you kept in a previously issued policy? . . . . . — X

4 by permitting another to withdraw funds that you deposited in a joint bank account? . . . . . — X

5 by purchasing and/or conveying title to real property to your spouse and yourself as tenants by the entirety or as joint tenants with right of survivorship? (If "Yes," see instruction 9.) . . . . . — X

6 by purchasing and/or conveying title to any other property to another and yourself as joint tenants? . . . . . — X

7 by exercising or releasing a power of appointment? . . . . . — X

8 by any other method, direct or indirect? . . . . . X —

If the answer is "Yes" to any of the foregoing, each gift (other than the creation of a joint tenancy with your spouse in real property with right of survivorship, or addition thereto, which you do not elect to treat as a gift) must be fully disclosed in Schedule A

Gifts by husband or wife to third parties.—Do you consent to have the gifts by you and by your spouse to third parties during the calendar quarter(s) considered as made one half by each of you? (See instruction 8.) . . . . . — X

If the answer is "Yes," the following information must be furnished and the consent shown below signed by your spouse.)

1) Name of spouse	1(b) Social security number
N/A	N/A

If the consent is effective for gifts made in a previous quarter(s) of the calendar year and no return was filed for such previous quarter(s) (see instruction 1) and such gifts are being reported on this return (see instruction 10), write the previous quarter(s) ending (month and year) in addition to the current quarter ending (month and year).

Were you married during the entire calendar quarter(s)? . . . . . — X

If the answer to 3 is "No," check whether [ ] married, [ ] divorced, or [X] widowed, and give date ► 8/4/64

Will a gift tax return for this calendar quarter be filed by your spouse? . . . . . — X

Consent of Spouse.—I consent to have the gifts made by me and by my spouse to third parties during the calendar quarter(s) considered as made one half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.

Spouse's signature ► N/A Date ► N/A

1	Enter the amount from Schedule A, line 1	None
2	Enter the amount from Schedule B, line c	None
3	Total (add amounts on lines 1 and 2)	None
4	Tax computed on amount on line 3 (See "Table for Computing Gift Tax" in separate instructions.) . . .	None
5	Tax computed on amount on line 2 (See "Table for Computing Gift Tax" in separate instructions.) . .	None
6	Balance (subtract amount on line 5 from amount on line 4)	None
7	Credit for foreign gift taxes (see instruction 20)	None
8	Tax due (subtract amount on line 7 from amount on line 6)	None

Please attach the necessary supplemental documents; see instruction 15.

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than donor, this declaration is based on all information of which the preparer has any knowledge.

Charles W. Hirschi — Charles W. Hirschi — 9-30-76
Signature — Date

Donald C. Dikli — Donald C. Dikli — 9-30-76
Preparer's signature (other than donor) — Date

14 Broadway, Highland, Illinois 62249
Preparer's address (number, street, and ZIP code)

EXHIBIT B

[redacted]DULE A—Computation of Taxable [redacted]

Description of gift and location of property (If real estate, give street address or rural route. If stock, give exact name of issuing corporation. If bonds, give maturity date, interest rate, and name of issuing corporation. If mortgage or note receivable, give date, interest rate, and name of maker. If interest in business, give name and address of business. If gift was disclosed, such as Attorney or Accountant, explain how.)	Donee's Address (Donee of gift)	Date of Gift	Value at date of Gift
(See attached sheet)			

a) Total gifts of donor	45,000.00
(b) One half of items ..... to ..... attributable to spouse (see instruction 11)	None
(c) Balance (subtract amount on line b from amount on line a)	45,000.00
d) Gifts of spouse to be included (from line b of spouse's return) (see instruction 11)	None
e) Total gifts (add amount on lines c and d)	45,000.00
f) Total exclusions not exceeding $3,000 for the calendar year for each donee (except gifts of future interests)	15,000.00
g) Total included amount of gifts (subtract amount on line f from amount on line e)	30,000.00
h) Deductions (see instructions 16, 17, and 18):	
(1) Charitable, public, and similar gifts (based on items ..... to ....., less exclusions)	
(2) Marital deduction (based on items ..... to .....)	
(3) Specific exemption claimed	30,000.00
i) Total deductions (add amounts on lines 1, 2, and 3)	30,000.00
j) Amount of taxable gifts (subtract amount on line i from amount on line g)	None

SCHEDULE B—Returns, Amounts of Specific Exemption, and Taxable Gifts for Prior Periods

Did you (the donor) file gift tax returns for prior periods? ☐ Yes ☒ No

(If "Yes," follow instruction 19 in completing Schedule B below.)

Calendar years (prior to 1971) or calendar quarters (1971 and subsequent years)	Internal Revenue office where prior return was filed	Amount of specific exemption	Amount of taxable gifts
None	None	None	None
a) Totals for prior periods (without adjustment for reduced specific exemption)		None	None
b) Amount, if any, by which total specific exemption, line a, exceeds $30,000 (see instruction 19)			None
c) Total amount of taxable gifts for prior periods (add amount, last column, line a, and amount, if any, line b)			None

(If more space is needed, attach additional sheets of same size.)

☆ U.S. GOVERNMENT PRINTING OFFICE—1975—672-224

[Attachment to Schedule A]

1. The following property:

1 U.S. Treasury Note No. 28558 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 28559 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 28560 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 9816 dated November 6, 1974 due May 15, 1979 for $5,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $196.88 each.

1 U.S. Treasury Note No. 11424 dated November 6, 1974 due May 15, 1979 for $10,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $393.75 each.

Donee: Virginia Hemme
10517 Chickering Drive
St. Louis, Missouri 63136
$18,000.00 9-28-76 $18,000.00

2. The following property:

1 U.S. Treasury Note No. 28555 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 28556 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 28557 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 9726 dated November 6, 1974 due May 15, 1979 for $5,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $196.88 each.

1 U.S. Treasury Note No. 11388 dated November 6, 1974 due May 15, 1979 for $10,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $393.75 each.

Donee: Alvin Hemme
10517 Chickering Drive
St. Louis, Missouri 63136

$18,000.00	9-28-76	$18,000.00

3. The following Property:

1 U.S. Treasury Note No. 28552 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 28553 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 28554 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

Donee: Ronald Hemme
10517 Chickering Drive
St. Louis, Missouri 63136
$3,000.00 9-28-76 $3,000.00

4. The following property:

1 U.S. Treasury Note No. 22216 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 22220 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 22221 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

Donee: Brenda Hemme
11809 Strand Drive Apt. #1
Florissant, Missouri 63033
$3,000.00 9-28-76 $3,000.00

5. The following property:

1 U.S. Treasury Note No. 22276 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 22214 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

1 U.S. Treasury Note No. 22215 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

Donee: Dennis Hemme
11809 Strand Drive Apt. #1
Florissant, Missouri 63033

$3,000.00	9-28-76	$3,000.00

Form 706
(Rev. June 1977)
Department of the Treasury
Internal Revenue Service

United States Estate Tax Return

Estate of citizen or resident of the United States (see separate instructions)
Date of death after December 31, 1976.

IRS use only
Date received

Decedent's first name and middle initial	Decedent's last name	Date of death
CHARLES W.	HIRSCHI	11/9/78
Domicile at time of death	**Year domicile established**	**Decedent's social security number**
Illinois	1889	340-20-9749

Deceased's personal representative or persons in possession of property

Name	Address (Number and street, city, State, and ZIP code)
Farmers & Merchants Bank of Highland, Trustee of Revocable Living Agreement of decedent	1223 Broadway Highland, Illinois 62249

Name and location of court where will was probated or estate administered: No Probate — Case number: ---

If decedent died testate check here ► X and attach a certified copy of the will.

Authorization to receive confidential tax information under 26 C.F.R. 601.502(c)(3)(ii) If return prepared by an attorney on behalf of the deceased's personal representative:
I declare that I am the attorney of record for the deceased's personal representative before the above court, that I prepared this return on behalf of the deceased's personal representative, that I am not currently under suspension or disbarment from practice before the Internal Revenue Service, and that I am currently qualified to practice in the State of Illinois

914 Broadway
Highland, Illinois 62249
(Signature of attorney) Donald C. Rikli (Address (number and street, city, State, and ZIP code)) (Date)

Computation of Tax

1	Total gross estate (from Recapitulation, page 3, line 10)	1	430,021.77
2	Total allowable deductions (from Recapitulation, page 3, line 29)	2	27,779.67
3	Taxable estate (subtract the amount on line 2 from the amount on line 1)	3	402,242.10
4	Adjusted taxable gifts (total amount of taxable gifts (within the meaning of section 2503) made by decedent after December 31, 1976, other than gifts which are includible in decedent's gross estate (section 2001(b)))	4	None
5	Add the amount on line 3 and the amount on line 4	5	402,242.10
6	Tentative tax on the amount on line 5 from Table A in the separate instructions	6	122,562.31
7	Aggregate gift taxes payable with respect to gifts by decedent after December 31, 1976, including gift taxes paid by decedent's spouse for split gifts (section 2513) if decedent was the donor of such gifts and they are includible in decedent's gross estate	7	None
8	Subtract the amount on line 7 from the amount on line 6	8	122,562.31
9	Unified credit against estate tax from Table B in the separate instructions	9	34,000.00
10	Adjustment to unified credit (20% of aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by decedent after September 8, 1976)	10	None*
11	Allowable unified credit (subtract the amount on line 10 from the amount on line 9)	11	34,000.00
12	Subtract the amount on line 11 from the amount on line 8 (but not less than zero)	12	88,562.31
13	Credit for State death taxes not to exceed the amount on line 12; see Table C in the separate instructions and attach credit evidence	13	6,871.75
14	Subtract the amount on line 13 from the amount on line 12	14	81,690.56
15	Credit for Federal gift taxes (see section 2012 and attach computation)	15	
16	Credit for foreign death taxes (from Schedule P). (Form 706CE is required)	16	
17	Credit for tax on prior transfers (from Schedule Q)	17	
18	Total (add the amounts on lines 15, 16, and 17)	18	None
19	Subtract the amount on line 18 from the amount on line 14	19	81,690.56
20	Prior payments. Explain in attached statement; see instruction 5	20	
21	United States Treasury bonds redeemed in payment of estate tax	21	55,503.39
22	Total (add the amount on line 20 and the amount on line 21)	22	55,503.39
23	Balance due (subtract the amount on line 22 from the amount on line 19)	23	26,187.17

Note: Please attach the necessary supplemental documents; see instruction 6.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than decedent's personal representative or person in possession of property is based on all information of which he has any knowledge.

FARMERS & MERCHANTS BANK OF HIGHLAND, Trustee
By
Signature of decedent's personal representative or person in possession of property — Trust Officer — Date

914 Broadway
Highland, Illinois 62249
Signature of preparer other than decedent's personal representative (also give address) — Date

DONALD C. RIKLI

EXHIBIT C

14

Form 706 (Rev. 6-77)

15

Estate of: CHARLES W. HIRSCHI, Deceased.

SCHEDULE G—Transfers During Decedent's Life

	Yes	No
1 Did the decedent make any transfer described in the first paragraph (including the six subparagraphs) of the separate instructions for this schedule?	X	
2a Did the decedent, at any time, make a transfer (other than an outright transfer not in trust) without an adequate and full consideration in money or money's worth, but not believed to be includible in the gross estate as indicated in the first paragraph (including the six subparagraphs) of the separate instructions for this schedule?	X	
If "Yes," furnish the following information:		
2b Date: See Attached Schedule / 2c Amount or value / 2d Character of transfer		
3a Did the decedent, before January 1, 1977, and within 3 years immediately preceding death, make any transfer of property without an adequate and full consideration in money or money's worth?	X	
If "Yes," furnish the following information:		
3b Date: See attached schedule / 3c Amount or value / 3d Character of transfer		
3e Motive which actuated decedent in making the transfer: To make gifts		
3f Names and addresses of hospitals in which decedent was confined within 3 years of death: St. Joseph's Hospital, 1515 Main Street, Highland, Il. 62249		
4 Were there in existence at the time of the decedent's death any trusts created by decedent during decedent's lifetime?	X	
5a Have several gift tax returns ever been filed?	X	
If "Yes," furnish the following information:		
5b Period(s) covered: 9/76;12/77;3/78 / 5c Internal Revenue office(s) where filed: Kansas City, Missouri		

Item Number	Description and stock CUSIP number if available	Alternate valuation date	Alternate value	Value at date of death
	A. Transfers by decedent after December 31, 1976, and within 3 years of death unless excepted under section 2035(b):			
1	None			
	Gift tax paid by decedent or estate for above gifts made by decedent or spouse after December 31, 1976, and within 3 years of decedent's death	x x x x x	x x x x x	None.
	B. Other transfers:			
1	9-28-76, Treasury Notes to Virginia Hemme, daughter, described as follows: 1 U. S. Treasury Note No. 28558 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each; 1 U. S. Treasury Note No. 28559 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each; 1 U. S. Treasury Note No. 28560 dated November 6, 1974 due May 15, 1979 for			
	TOTAL (Also enter under the Recapitulation, page 3.)			

(If more space is needed, insert additional sheets of same size.)

Estate of CHARLES W. HIRSCHI, Deceased.
Schedule G, Continued:

$1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 9816 dated November 6, 1974 due May 15, 1979 for $5,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $196.88 each;

1 U.S. Treasury Note No. 11424 dated November 6, 1974 due May 15, 1979 for $10,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $393.75 each.

Value: $18,000.00

2. 9-28-76, Treasury Notes to Alvin Hemme, Son-in-law, described as follows:

1 U.S. Treasury Note No. 28555 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 28556 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 28557 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 9726 dated November 6, 1974 due May 15, 1979 for $5,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $196.88 each;

1 U.S. Treasury Note No. 11388 dated November 6, 1974 due May 15, 1979 for $10,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $393.75 each.

Value: 18,000.00

3 9-28-76, Treasury Notes to Ronald Hemme, Grandson, described as follows:

1 U.S. Treasury Note No. 28552 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 28553 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 28554 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

Value: 3,000.00

4 9-28-76, Treasury Notes to Brenda Hemme, spouse of grandson, described as follows:

1 U.S. Treasury Note No. 22216 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 22220 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 22221 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

Value: 3,000.000

5 9-28-76, Treasury Notes to Dennis Hemme, grandson, described as follows:

1 U.S. Treasury Note No. 22276 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 22214 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each;

1 U.S. Treasury Note No. 22215 dated November 6, 1974 due May 15, 1979 for $1,000.00 with Coupon due May 15, 1977 and subsequent coupons attached at $39.38 each.

Value: 3,000.00

The following listed property held by Farmers & Merchants Bank of Highland, Trustee of Revocable Living Trust Agreement of decedent dated October 9, 1974:

6 Lots Numbered 9 and the East One-Half (1/2) of Lot Numbered 10 in Block Number 8 of the Original Town (now City) of Highland as the same appears from plat thereof recorded in the Recorder's Office of Madison County, Illinois, in Plat Book 4 Page 40, situated in the City of Highland, County of Madison and State of Illinois;

Improvements: Two Family Apartment, 2-story brick, basement, garage

Title: Fee simple, deemed perfect

Encumbrances: None, except current taxes

Value: 44,000.00

7 Farmers & Merchants Bank of Highland, cash 683.14

8 First National Bank of Nashville, T/C/D #2108 22,000.00

8a Accrued interest on Item 8 811.16

9 The following T/C/D's of First National Bank of Highland:

Cert. No.	Amount	Accrued Interest	Total
AR16343	1,025.00	27.07	1,052.07
18174	4,000.00	7.47	4,007.47
			5,059.54

10 The Following T/C/D's of Farmers & Merchants Bank of Highland:

Cert. No.	Amount	Accrued Interest	Total
47908	1,000.00	25.00	1,025.00
48631	10,000.00	116.58	10,116.58
49777	10,000.00	63.18	10,063.18
48527	1,976.41	36.59	2,013.00
48349	5,000.00	176.01	5,176.01
48653	3,842.51	44.82	3,887.33
			32,281.10

Form **843**
(Rev. October 1981)
Department of the Treasury
Internal Revenue Service

Claim

▶ See instructions on back

OMB No. 1545-0024
Expires 12-31-83

20

If your claim is for an overpayment of income taxes, do NOT use this form (see instructions)

Please print or type

Name of taxpayer or purchaser of stamps
CHARLES W. HIRSCHI, Deceased.

Number and street
c/o Farmers & Merchants Bank of Highland, Trustee, / 1223 Broadway

City or town, State, and ZIP code
Highland, IL 62249

Fill in applicable items—Use attachments if necessary

1 Your social security number
340-20-9749

2 Employer identification number

3 Internal Revenue Service Center where return (if any) was filed
Kansas City, MO

4 Name and address shown on return, if different from above
N/A

5 Period—prepare separate form for each tax period
From , 19 , to , 19

6 Amount to be refunded or abated
$ 6,000.00

7 Dates of payment
7/27/82

8 Type of tax
☐ Employment ☒ Estate ☐ Excise ☐ Gift ☐ Stamp

9 Kind of return filed
☒ 706 ☐ 709 ☐ 720 ☐ 940 ☐ 941 ☐ 990-PF ☐ 4720 ☐ Other (specify) ▶

10 If this claim involves refund of excise taxes on gasoline, special fuels or lubricating oil, please indicate your tax year for income tax purposes N/A

11 Explain why you believe this claim should be allowed and show computation of tax refund or abatement

See attached statement

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signed By FARMERS & MERCHANTS BANK OF HIGHLAND, Trustee
Trust Officer
Dated 8/1t 19 82

Director's Stamp
(Date received)

For Internal Revenue Service Use Only

☐ Refund of taxes illegally, erroneously, or excessively collected.
☐ Refund of amount paid for stamps unused, or used in error or excess.
☐ Abatement of tax assessed (not applicable to estate or gift taxes).

20

For Paperwork Reduction Act Notice, see instructions on back.

Form 843 (Rev. 10-81)

EXHIBIT H

20

STATEMENT TO BE ATTACHED TO CLAIM OF THE ESTATE OF CHARLES W. HIRSCHI, DECEASED:

Schedule G of the decedent's Federal Estate Tax return (Form 706) shows that the decedent made a transfer of land and Treasury Notes on September 28, 1976, which was within three (3) years of the date of death of said decedent. As a consequence, pursuant to I.R.C. Section 2035, this transfer is included in the estate of said decedent and is shown under paragraph B of said Schedule G.

This gift was also made during the transitional period from 9/8/76 to 12/31/76, when, pursuant to I.R.C. Section 2010(c), the unified credit would be reduced by 20% of the pre-1977 specific exemption (.20 × $30,000 = $6,000) as a result of the making of such a gift. It is the position of this estate that it was not the intention of the drafters of the Internal Revenue Code that both the amount of the gift be included in the estate *and* the unified credit be reduced by 20% of the pre-1977 specific exemption under Section 2010(c), but it was the intention of the drafters of the Internal Revenue Code that in the event of the occurrences which are involved in this case, the gross estate would include all of the gift in contemplation of death and the unified credit against estate tax would not be reduced by 20% of the pre-1977 specific exemption.

In essence, such inequitable treatment results in double taxation. Section 2010 allows a unified credit for every estate against the tax imposed by Section 2001. Section 2001 imposes a tax upon the *transfer* of the taxable estate. The tax is calculated by imposing a tentative tax on the sum of the taxable estate and the amount of the adjusted taxable gifts over the aggregate amount of tax payable under Chapter 12 with respect to gifts made by the decedent after 1976. Under Section 2001,"adjusted taxable gifts" means the total amount of taxable gifts (within the meaning of 2503) made by the decedent after Decem-

ber 31, 1976, OTHER THAN GIFTS WHICH ARE INCLUDIBLE IN THE GROSS ESTATE OF THE DECEDENT. Such a specific "exclusion" was made for gifts already included in the gross estate under the Reform Act of 1976. This "exclusion" prevents a double taxation of gifts. A similar provision should have been added to Section 2010(c) to avoid the inequitable tax treatment which results under 2010(c) when the gift is included in the gross estate and is not reduced by the full $30,000.00 exemption. Furthermore, it is inequitable that an exemption of $30,000.00 should be allowed in tax years 1975 and 1977 but not during the period of September 8 through December 31, 1976.

Section 2001 provides for a 34% rate of tax upon the top bracket of the estate of Charles Hirschi. The tax imposed by Section 2001 is calculated upon the gross estate which includes, under Section 2035, the transfers made on September 28, 1976. Though the process of inclusion of these transfers in the gross estate, and a reduction in the allowable unified credit, the effect results in a doubling of the 34% rate of tax. Furthermore, there is no statute which provides for Section 2035 inclusion and double taxation.

In the alternative, it doubles the amount subject to the same rate and thus results in an unjust enrichment for the benefit of the government in the amount of $6,000.00. The imposition of an unwarranted burden of tax in the amount of $6,000.00 thus penalizes the unfortunate transferor who made gifts within the period between September 20, 1976 and December 31, 1976, and also died within 3 years of the time of the gift.

In the Supreme Court of the United States

No. 84-1944

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

ALVIN HEMME, ET AL.

APPEAL from the United States District Court for the Southern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

OCTOBER 7, 1985